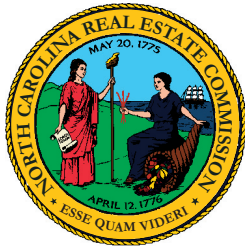


NORTH CAROLINA REAL ESTATE COMMISSION



ADVISORY COMMITTEE

2004 BROKER-IN-CHARGE

REPORT

November 17, 2004

NORTH CAROLINA REAL ESTATE COMMISSION
2004 BROKER-IN-CHARGE ADVISORY COMMITTEE

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NORTH CAROLINA REAL ESTATE COMMISSION
2004 BROKER-IN-CHARGE ADVISORY COMMITTEE

Background and Recommendations

BACKGROUND

Responding to concerns from practitioners and North Carolina Real Estate Commission members regarding the competency of brokers-in-charge of real estate offices, Commission Chairman Allan R. Dameron at the Commission's May 12, 2004 meeting formed the *2004 Broker-in-Charge Advisory Committee* to recommend to the Commission the education, experience or other requirements which should be imposed on persons to become broker-in-charge of a real estate office to reasonably assure they possess the knowledge and skills necessary to effectively perform the duties and functions of broker-in-charge [Note: The Commission previously formed a similar advisory committee which submitted its report and recommendations to the Commission June 4, 1997].

Appointed to serve on the committee were Assistant Attorney General Harriet Worley from the Consumer Protection Section of the North Carolina Attorney General's Office, North Carolina Association of REALTORS® General Counsel Will Martin, Real Estate Commission member William C. Lackey, Jr., and nine other members, each appointed by one member of the Real Estate Commission as follows: Benjamin K. Ball (Morehead City), W. Laynie Beck, Jr. (Fayetteville), John W. Carroll (Asheville), Paul G. Gilmer, Sr. (Greensboro), Philip M. Guy, Sr. (Fayetteville), Robert W. Lawing (Charlotte), Carol H. Lesley (Concord), William H. Lucas (Rich Square), and Vance B. Young (Wrightsville Beach). Commission Vice-Chair Marsha H. Jordan participated in the committee's third meeting in place of Mr. Lackey who was unable to attend.

The *2004 Broker-in-Charge Advisory Committee* met in the offices of the Real Estate Commission August 19, September 16 and October 21, 2004 [See **Meeting Reports**]. Commission Executive Director Phillip T. Fisher acted as Facilitator for the meetings. The Commission's Director of Education and Licensing, Larry A. Outlaw, and Special Deputy Attorney General Thomas R. Miller were the Commission's staff advisors to the committee. Also attending from the Commission staff were Director of Administration Mary Frances Whitley, Director of Audits and Investigations Emmet R. Wood, and Legal Education Officer Patricia A. Moylan. Rick Zechini, Director of Regulatory Affairs for the North Carolina Association of REALTORS®, was present for the September and October meetings.

To assist the committee in carrying out its charge, the Commission staff developed and furnished the members a "Work Plan" [**Exhibit #1**], a summary of "Issues to Consider Regarding BIC Education and/or Experience Requirement" [**Exhibit 2**], and a document setting forth an approach to increasing broker-in-charge qualification requirements and eliminating the salesperson license category [**Exhibit #3**]. The committee also referred to a variety of other resource materials in their examination of broker-in-charge related issues, including statistical information on the "Effect of 2000 Licensing Requirement Changes on Broker Applications and Broker-Salesperson Ratio" [**Exhibit #4**], summary information on the Colorado and Oregon single license programs [**Exhibit #5**], "Conclusions and Recommendations from the 1997 Broker-in-Charge Advisory Committee Report," the "Broker-in-Charge Guide," the "Broker Prelicensing Course Syllabus," and the syllabus from the former "Real Estate Brokerage Operations Course."

Committee discussion during the first two meetings focused primarily on the function and responsibilities of brokers-in-charge of real estate offices, knowledge and skill deficiencies observed by committee members especially in newly designated brokers-in-charge, and how best to correct these deficiencies. During its third meeting, the committee expanded the scope of its discussion to include the feasibility and advisability of eliminating the salesperson license category in favor of a single (broker) license relieving brokers-in-charge of the duty under Commission rules to supervise salespersons and acknowledging that real estate consumers are not aware nor do they care about the license status of real estate agents with whom they are working.

After discussion, the committee recommended that the Real Estate Commission:

RECOMMENDATIONS

- 1 Encourage and assist consumers in verifying the licensure of real estate agents with whom they are dealing by
 - a. requiring agents to include their real estate license numbers on offers to purchase, “Working With Real Estate Agents” brochures and transaction documents where the agents’ signatures are required;
 - b. including in the “Working With Real Estate Agents” brochure a statement that the real estate agent with whom the client or customer is working is state-licensed and regulated; and
 - c. in cooperation with the North Carolina Association of REALTORS®, informing the public through public service announcements and other means of the importance of receiving the “Working With Real Estate Agents” brochure (which will contain the real estate agent’s license number).
- 2 Clarify to real estate licensees that, when acts which require oversight by a broker-in-charge (e.g., depositing, disbursing and accounting for trust funds) are performed at a corporate office or other office, a broker-in-charge must be designated for the office.
- 3 Continue/increase efforts to educate brokers-in-charge and other licensees regarding agency-related matters.
- 4 Amend Rule A.0506(d) to delete the word “personally” and insert in lieu thereof the word “directly” in the sentence which reads “A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and personally (emphasis added) supervise the salesperson...” While acknowledging the importance of regular face-to-face contact with salespersons, the committee also recognized that technology (cell phones, e-mail, etc.) affords agents more independence which reduces the opportunity for such contact but enhances the ability of brokers-in-charge to communicate with them.
- 5 Amend Commission rules to change the term “principal broker” to “qualifying broker” or some similar term to more accurately reflect the limited responsibilities of the position.
- 6 Require persons (effective October 1, 2005) who request to be designated broker-in-charge of a real estate office to complete twelve classroom hours of instruction consisting of an eight-hour *Broker-in-Charge Course* and four-hour *Trust Account Course* both of which must be completed not later than 120 days following designation as broker-in-charge.

- 7 Require persons (effective October 1, 2005) who request to be designated broker-in-charge of a real estate office to possess at least one year full-time (or equivalent part-time) experience as a real estate broker and/or salesperson, or real estate education/experience equivalent to such experience. Verification of such experience shall be by certified statement from the person requesting designation that he/she has been actively engaged in the real estate brokerage business (which may include residential, commercial, property management or other transactions for which a real estate license is required) for the required period of time, with the Commission conducting spot inspections of licensees and records to better assure compliance. For the purposes of this requirement, “full-time” shall mean a minimum of forty hours per week.
- 8 Require persons (effective October 1, 2005) who are designated as broker-in-charge of a real estate office to complete each year while so designated either a continuing education course that is developed by the Commission for this purpose or another course chosen from a list of courses approved by the Commission which the Commission has determined to be of special benefit to brokers-in-charge. The completion of this course will satisfy the person’s annual continuing education elective course requirement. [If this recommendation is implemented, the broker-in-charge instruction described in recommendation #6 above would not have to be repeated on a recurring basis by brokers-in-charge who are continuously designated.]
- 9 As soon as practicable, discontinue issuing salesperson licenses, and require persons applying for broker licenses after that date to complete a 90-hour broker prelicensing course and pass the state licensing examination in order to qualify for licensure, and require them to complete within two years of licensure an additional 90-hour post-licensing course of instruction in order to retain their licenses. Until they have completed the entire 180-hour course of instruction, such brokers must be supervised by a broker-in-charge whenever they engage in real estate brokerage, and they could not be designated broker-in-charge of a real estate office; and
- 10 Convert on that date all salesperson licenses to broker licenses (active salesperson to active broker, inactive salesperson to inactive broker), but require these “converted brokers” to either complete within two years a 24-hour “broker transition course” of instruction or to certify to the Commission that they have at least four years full-time cumulative experience as a real estate salesperson or broker within the past six years. Completion of this course would be recognized as satisfying a portion of the licensee’s continuing education requirement. Failure to complete the course (or satisfy the experience alternative) within the two-year period would place the license on inactive status, and the inactive licensee would be required to complete the 90-hour post-licensing course in order to activate the license. *[Mr. Gilmer and Mr. Young dissented as to the experience alternative to the broker transition course, believing that salespersons should be required to complete additional education as a condition for retaining their broker licenses].* Until “converted brokers” have completed the 24-hour broker transition course of instruction (or satisfied the experience alternative) they must be supervised by a broker-in-charge if/when they engage in real estate brokerage, and they could not be designated broker-in-charge of a real estate office.

NORTH CAROLINA REAL ESTATE COMMISSION
2004 BROKER-IN-CHARGE ADVISORY COMMITTEE

August 19, 2004

Raleigh, North Carolina

REPORT

Committee Members Present:

Benjamin K. Ball (Morehead City)
W. Laynie Beck, Jr. (Fayetteville)
John W. Carroll (Asheville)
Paul G. Gilmer, Sr. (Greensboro)
Philip M. Guy, Sr. (Fayetteville)
William C. Lackey, Jr. (Charlotte)
Robert W. Lawing (Charlotte)
William H. Lucas (Rich Square)
Will Martin (Greensboro)
Harriet Worley (Raleigh)
Vance B. Young (Wrightsville Beach)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Larry A. Outlaw, Director of Education and
Licensing
Thomas R. Miller, Director of Legal Services
Mary Frances Whitley, Director of Administration
Emmet R. Wood, Director of Audits and
Investigations
Patricia A. Moylan, Legal Education Officer

Welcome and Charge

Mr. Fisher welcomed the members [Item 1] to the first meeting of the 2004 Broker-in-Charge Advisory Committee. Mr. Lackey stated that committee member Carol H. Lesley (Concord) would be unable to attend the meeting. Mr. Fisher reminded the committee that additional meetings are scheduled for September 16 and October 21, if necessary.

Mr. Fisher reviewed with the committee its charge from the Real Estate Commission; namely, to recommend to the Commission the education, experience or other requirements which should be imposed on persons to become broker-in-charge of a real estate office to reasonably assure they possess the knowledge and skills necessary to effectively perform the duties and functions of a broker-in-charge.

Mr. Fisher referred the committee members to the Work Plan [Item 2] developed to assist the committee in carrying out its charge. A copy of the Work Plan and related materials was provided to each committee member

in advance of the meeting.

Mr. Outlaw reviewed with the committee the introduction to the Work Plan. He especially pointed out that, based upon the recommendations of a similar Broker-in-Charge Advisory Committee formed by the Commission in 1997, the Commission now requires completion of a Broker-in-Charge course by persons who wish to be designated as broker-in-charge of a real estate office, and the Commission restructured its salesperson and broker licensing requirements to encourage persons with salesperson licenses to upgrade to broker licenses. As a result, the percentage of licensees with broker licenses increased from 51% in 2000 to 59% in 2004. Also, 72% of all active licenses are broker licenses [Item 3]. Despite this progress, Mr. Outlaw doubted whether this program would substantially reduce the number of salesperson licensees in the near future.

Mr. Outlaw stated that the current advisory committee was formed in response to concerns from the real estate industry that brokers who become brokers-in-charge with little or no brokerage experience are inadequately prepared to function independently and, therefore, the current requirements to become a broker-in-charge may need to be changed. Commenting on this, the committee members generally echoed these concerns that, while the Broker-in-Charge Course is excellent, additional training should be considered as well as experience in the real estate business. Mr. Guy suggested this may be especially problematic with sole practitioners who have no information network, and he pointed out that of the 320 firms operating in the Fayetteville area, 9 have more than 21 agents; 16 have from 8 to 20 agents; 88 have from 2 to 7; and 207 are single-person firms.

Analysis of Duties Expected of a Broker-in-Charge

Guiding the committee members through the Work Plan, Mr. Outlaw posed the question, "What duties should a broker-in-charge be reasonably expected to perform?" He then reviewed with the committee members the duties of a broker-in-charge currently required by Commission rules and solicited their comments as follows:

A. Administrative Duties

1. Assure that each licensee (salesperson or broker) affiliated with an office has a current, active license (including completion of all required CE and

timely renewal of license), that each salesperson is shown as affiliated with the firm/office and the BIC, that each broker is shown as affiliated with the firm/office, that the Commission is promptly notified when any salesperson affiliates with the firm/BIC or terminates such affiliation, and that all other requirements of Rules A.0503, A.0504 and A.0506 are met.

The committee found no problem with this requirement but indicated that many BICs probably do not routinely verify that agents' licenses are on active status.

2. Assure that each licensee carries his/her license renewal pocket card on his/her person at all times when engaging in brokerage and displays it upon request as required by Rule A.0101.

The committee found no problem with this requirement. Although the BICs probably do not routinely verify that agents carry pocket cards, since agents are required to display their pocket card when taking continuing education courses, this encourages them to carry them.

3. Assure that the BIC's license certificate and the firm's license certificate (or copy thereof) is prominently displayed in the office.

*"Prominently displayed" was clarified by the staff advisors to mean displayed where the certificate could be seen by the public. Some members stated that the public never requests to see license certificates or pocket cards. The committee was receptive to Ms. Worley's suggestion that the **N.C. Association of REALTORS® and perhaps the Real Estate Commission educate consumers to the importance of verifying that real estate agents with whom they are dealing are properly licensed.** Regarding virtual office website (VOW) compliance with this requirement, the staff advisors stated that some occupations/professions **require licensees to include their license numbers in advertising.** The committee members will further consider this in connection with VOWs and other advertising.*

4. Provide timely notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use. [This duty is shared with the principal broker of the firm. See Rule A.0504.]

The committee found no problem with this requirement.

5. Retain and maintain records relating to transactions conducted by or on behalf of the firm at the office as required by Rule A.0108.

*Responding to comments from committee members who image transaction records and/or maintain records from various offices at a central location, the staff advisors stated that this was acceptable so long as the BIC could readily produce the documents when requested by the Commission to do so. Otherwise, the committee found no problem with this requirement. A committee member suggested that more **emphasis be placed on recordkeeping in the BIC Course.***

6. Verify, upon request, to the Commission the experience of any salesperson at the office who may be applying for licensure as a broker (and asking to waive completion of the Broker Preliminary Course).

Though rarely needed, the committee found no problem with this requirement.

7. Notify the Commission within 10 days of any change in your status as BIC.

The committee found no problem with this requirement.

B. Duties Related to Advertising — Assure the proper conduct of advertising by or in the name of the firm at the office. [See Rule A.0105.]

Based upon comments from the committee members, it appears that review of advertising by the BIC committee members ranges from occasional inspections to determine if the advertising satisfies MLS, corporate, or franchise requirements to a more thorough review of the content of all advertising and flyers. However, the BIC generally does not verify that the property information in the advertising is accurate. The staff advisors stated that the Real Estate Commission's primary concern would be if a BIC had actual knowledge of an error in advertising and did nothing to correct it. Otherwise, no problem with this requirement. [See also A.3. regarding possible use of real estate license numbers in advertising.]

C. Duties Related to Trust Accounts — Assure the proper maintenance at the office of the trust or escrow account of the firm and the records pertaining thereto. [See Rule A.0107 and the coverage of "Red Flags" and "Internal Controls" on pages 70-72 of the Broker-in-Charge Guide.]

1. Who actually maintains your firm's trust account records and handles deposits and disbursements?

Based upon comments from the committee members, it appears that in smaller offices, the BIC probably personally maintains the trust account(s) or closely supervises the bookkeeper. In larger offices, the BIC may have little, if any, direct involvement in the day-to-day maintenance of trust accounts and trust account records. In these firms, the BIC's role is often supervisory. In firms with multiple offices, where trust accounting is frequently performed in a centralized location, the staff advisors stated that the BIC of the office where the accounting is performed and the BIC of the office where the funds are received would both be responsible. The committee members discussed whether the principal broker of the firm should instead be held responsible where funds from branch offices are deposited into a central account. When it was pointed out that principal brokers are not required to take the BIC Course or have any other specialized training, the committee members suggested that they should perhaps receive training similar to that required of the BIC. The committee will revisit this subject at a future meeting.

2. Are the internal controls recommended in the Broker-in-Charge Guide reasonable and appropriate?

The committee found no problem with these recommendations.

3. To what extent are these internal controls being followed by brokers-in-charge?

See C.1.

D. Duty to Assure Compliance with Agency Agreement and Disclosure Requirements — Supervise all salespersons and brokers employed at the office with respect to adherence to agency agreement and disclosure requirements.

What specific steps should a BIC take to accomplish this responsibility?

Although some committee members stated they have not observed widespread non-compliance with agency agreement and disclosure requirements, others have. Of those who have observed non-compliance, they especially pointed to agents at smaller offices and those who have not recently completed their prelicensing education. They stated that these agents often fail to use the Working With

Real Estate Agents brochure. Mr. Martin believed that many BICs do not understand the requirements and, therefore, cannot communicate them to their agents. It was generally agreed that the Commission should continue and perhaps increase its efforts to educate BICs and other licensees on agency-related matters.

E. Duties Related to Supervision of Salespersons

— Supervise salespersons affiliated with or engaged on behalf of the firm at the office in accordance with the requirements of Rule A.0506.

1. Comply with the administrative requirements of the rule (submitting notification of salesperson supervision forms to Commission, notifying Commission when a salesperson leaves the firm/office, etc.).

The committee found no problem with this requirement.

2. Actively and personally supervise the salesperson in a manner which reasonably assures that the salesperson performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. [See pages 27-38 in the "Supervision" section of the Commission's Broker-in-Charge Guide describing the Commission's criteria for determining the adequacy of a BIC's supervision of a salesperson.]

- a. Are the Commission's criteria reasonable and appropriate?

Despite technological advancements (cell phones, e-mail, etc.) which enable agents to operate more easily beyond the confines of the traditional "bricks and mortar office", the committee members indicated they still consider it important to personally meet with agents on a regular basis. Depending to some extent upon the number of agents at their office, it appears that some BICs exercise a considerable amount of personal supervision over their agents, including reviewing transaction and closing documents and MLS data. They all utilize telephones, cell phones and e-mail to maintain frequent contact with their agents when they are not in the office. In larger offices, the BIC may designate other person(s) to assist in performing the BIC duties. Although the members did not express any particular problem with the supervision requirement, they did inquire as to whether

the term “personally supervise” could be replaced with another, less rigid term (e.g., “directly”).

- b. What are the differences in your supervision of a newly licensed salesperson versus an experienced salesperson?

The committee members indicated they generally supervise newly licensed agents more closely.

- c. Is there any difference in the way you supervise an inexperienced salesperson and an inexperienced broker?

The committee members stated there was no difference in the level of supervision of salespersons versus brokers.

- d. What training do you provide/require for newly affiliated licensees?

All committee members recognized the value of training newly affiliated licensees and continuing their training over time. All conducted regular meetings with agents which included a training component. Policy manuals are also widely used.

Having completed the analysis of duties expected of a broker-in-charge, Mr. Outlaw stated that the committee will, at its next meeting, consider the current broker-in-charge concept and structure and then concentrate on whether the qualification requirements for designation as a broker-in-charge (education and/or experience) should be changed, and if so, how? To assist the committee members in preparing for this discussion, Mr. Outlaw furnished the members a copy of the syllabus used in the Commission’s former Real Estate Brokerage Operations Course previously required in the broker prelicense education curriculum, and a copy of the syllabus for the current Broker Prelicensing Course.

The meeting was adjourned to be reconvened September 16, 2004 at 9:00 a.m. in the Commission office.

Submitted by:

Phillip T. Fisher
Phillip T. Fisher, Facilitator

This 16th day of September, 2004.

NORTH CAROLINA REAL ESTATE COMMISSION
2004 BROKER-IN-CHARGE ADVISORY COMMITTEE

September 16, 2004

Raleigh, North Carolina

REPORT

Committee Members Present:

Benjamin K. Ball (Morehead City)
W. Laynie Beck, Jr. (Fayetteville)
John W. Carroll (Asheville)
Paul G. Gilmer, Sr. (Greensboro)
Philip M. Guy, Sr. (Fayetteville)
William C. Lackey, Jr. (Charlotte)
Robert W. Lawing (Charlotte)
Carol H. Lesley (Concord)
William H. Lucas (Rich Square)
Will Martin (Greensboro)
Harriet Worley (Raleigh)
Vance B. Young (Wrightsville Beach)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Larry A. Outlaw, Director of Education and
Licensing
Thomas R. Miller, Director of Legal Services
Mary Frances Whitley, Director of Administration
Emmet R. Wood, Director of Audits and
Investigations
Patricia A. Moylan, Legal Education Officer

Others Present:

Rick Zechini, NCAR Director of Regulatory Affairs

August 19 Meeting Report and Recommendations

The *2004 Broker-in-Charge Advisory Committee* approved as presented Mr. Fisher's report of its August 19, 2004 meeting.

Following discussion at its August 19 and September 16 meetings, the committee recommended that the Real Estate Commission:

1. Encourage and assist consumers in verifying the licensure of real estate agents with whom they are dealing by
 - a. requiring agents to include their real estate license numbers on offers to purchase, "Working With Real Estate Agents" brochures and transaction documents where the agents' signatures are required;

- b. including in the "Working With Real Estate Agents" brochure a statement that the real estate agent with whom the client or customer is working is state-licensed and regulated; and
 - c. in cooperation with the North Carolina Association of REALTORS®, informing the public through public service announcements and other means of the importance of receiving the "Working With Real Estate Agents" brochure (which will contain the real estate agent's license number).
2. Clarify to real estate licensees that, when acts which require oversight by a broker-in-charge (e.g., depositing, disbursing and accounting for trust funds) are performed at a corporate office or other office, a broker-in-charge must be designated for the office.
3. Continue/increase efforts to educate brokers-in-charge and other licensees regarding agency-related matters.
4. Amend Rule A.0506(d) to delete the word "personally" and insert in lieu thereof the word "directly" in the sentence which reads "A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and personally (emphasis added) supervise the salesperson..." While acknowledging the importance of regular face-to-face contact with salespersons, the committee also recognized that technology (cell phones, e-mail, etc.) affords agents more independence which reduces the opportunity for such contact but enhances the ability of brokers-in-charge to communicate with them.
5. Amend Commission rules to change the term "principal broker" to "qualifying broker" or some similar term to more accurately reflect the limited responsibilities of the position.

Profile of N.C. Real Estate Firms

To assist the committee in its discussion of topics related to brokers-in-charge of real estate firms, Mr. Outlaw shared with the committee statistical information from the

National Association of REALTORS®' "North Carolina Report" profiling real estate firms in North Carolina. According to the report, 86% of North Carolina firms have 1 sales office, and 7% have 2 or 3 offices; residential brokerage accounted for 70% of the firms' main source of revenue; 84% of firms have offices with 10 or fewer salespeople with half reporting between 1 and 3; and 55% offer training to independent contractors, of which 30% provide regularly scheduled formal training sessions and 25% offer training in conjunction with sales meetings.

The committee members seemed especially interested to learn that the vast majority (\pm 86%) of real estate firms in North Carolina have only one office, and approximately 40% consist of 1-3 salespersons. However, Mr. Fisher noted that this was consistent with the statistics reported by Mr. Guy at the committee's previous meeting" that 207 of the 320 firms operating in the Fayetteville area are single-person firms.

Broker-in-Charge Knowledge/Skills Deficiencies

Mr. Outlaw furnished the committee members a worksheet [Item 1] to assist them in considering issues regarding education and/or experience requirements which should be imposed on persons to become brokers-in-charge of real estate offices. Responding to the question "What specific knowledge and skill deficiencies have you observed in newly designated brokers-in-charge?", the committee members cited lack of knowledge/skill regarding (1) establishing a brokerage firm, (2) maintaining trust accounts, (3) real estate contracts, and (4) agency disclosure and relationships. Although the committee concurred with Mr. Outlaw's observation that some of the knowledge/skills (e.g., contracts, agency) did not pertain to the particular duties imposed upon the broker-in-charge, committee members believed that brokers-in-charge should possess an understanding of these subjects superior to that of the persons working in their offices because, in their opinion, another responsibility of the broker-in-charge is to assure that persons working in the broker-in-charge's office are properly trained and educated. Also concurring with Mr. Outlaw's observation that these deficiencies could be addressed through additional education, various committee members nevertheless believed that a complete understanding of the subject matter could only be gained by applying it in real life situations through experience in real estate brokerage transactions. The committee members also opined that deficiencies are more acute in sole practitioner (one-person) firms where the practitioner cannot avail him/herself of the information network and resources present in larger firms.

Noting that the committee members appeared inclined toward imposing a real estate experience requirement and

additional education to qualify as broker-in-charge of a real estate office, Mr. Fisher and Mr. Outlaw discussed with the committee one possible approach set forth on their worksheet; namely, that brokers-in-charge be required to complete a revised and expanded *Broker-in-Charge Course* consisting of 6-7 classroom hours of instruction (now 4 ½ hours) plus the four-hour *Basic Trust Account Course* together with experience. In considering this approach, numerous relevant factors were discussed, including:

1. *Whether brokers-in-charge education should be completed before designation, or whether persons requesting to be designated should continue to be allowed to complete the education within a prescribed period of time following designation.* Although the committee preferred to have brokers-in charge complete the education prior to designation, Mr. Outlaw explained that because most broker-in-charge changes are made on short notice, firms would be forced to cease operations if there was not a qualified broker available to fill a vacancy in the position. Mr. Outlaw also pointed out that, given the need to designate new brokers-in-charge on short notice, requiring education prior to designation could prove problematic unless it could be made immediately available and readily accessible to persons needing it, which is logistically and practically impossible. In view of these concerns, the committee discussed the possibility of shortening the period during which brokers-in charge are allowed to complete the *Broker-in-Charge Course* from its current 120 days to some shorter period.
2. *The amount of education which should be required.* Mr. Outlaw stated that the current *Broker-in-Charge Course* was established as a 4 ½ hour course primarily to minimize cost and inconvenience to persons taking the course by avoiding an overnight stay and to reduce the Real Estate Commission's costs in conducting the course. In doing so, the course could be offered more frequently and at more locations throughout the state, thus benefitting affected licensees. Mr. Outlaw added that these same benefits would be substantially retained if the course was expanded to six or seven hours as proposed in the approach described in the worksheet. Although the committee generally agreed that brokers-in-charge needed more education than is currently offered in the *Broker-in-Charge Course*, there was no apparent consensus as to the amount needed. Mr. Lawing favored experience over education. Mr. Carroll recommended that the current course be retained as a refresher course for brokers-in-charge and that

new or prospective brokers-in-charge be required to complete a course similar to the 30-hour *Brokerage Operations Course* previously required in order to qualify for a broker license. Mr. Lucas was also very complimentary of the *Brokerage Operations Course*.

3. *Whether persons requesting to be designated broker-in-charge of a real estate office should be required to possess experience in real estate brokerage transactions.* The committee members generally believed that any education required to prepare persons to become brokers-in-charge of real estate offices could be enhanced by further requiring them to apply such education in real life situations. Most committee members believed that real estate experience would be especially beneficial to brokers who operate as sole practitioners because they do not have the training and the informational networking resources available in larger firms. Mr. Outlaw made the committee members aware of various issues related to imposing experience requirements, including what types of experience (residential, commercial, leasing, etc.) should be acceptable; how much experience should be required; and how to verify experience (e.g., verification by the person's broker(s)-in-charge, or simply requiring persons to certify their experience and then "spot checking" them). Mr. Outlaw also informed the committee of the Commission's previously unsuccessful efforts in obtaining approval from the General Assembly to impose an experience requirement on applicants for real estate broker licenses. Mr. Outlaw stated that, despite the fact that 45 states require broker license applicants to possess (usually two years) experience as a real estate salesperson, North Carolina state legislators have expressed restraint of trade concerns. The legislators contend that existing real estate brokerage owners can effectively prevent competition in their geographical areas by simply refusing to give others the opportunity to gain the required experience, and (especially in rural communities) there may not be other real estate firms with which salespersons can associate to obtain the required experience. While recognizing the concerns outlined and aware that a variety of issues must be addressed, it appeared that the committee wished to continue considering the imposition of an experience requirement on persons requesting to be designated broker-in-charge of a real estate office.

Single License

Aware that the Real Estate Commission's 1997 *Broker-in-Charge Advisory Committee* recommended to the Commission that it consider eliminating the salesperson license category in favor of a single (broker) license, Mr. Ball suggested that the committee further consider this proposal. He proposed that, on a date certain, the Commission no longer issue salesperson licenses and that all existing salesperson licenses be converted to broker licenses if the salespersons met certain conditions (e.g., real estate education and/or experience). Further, persons requesting to be designated broker-in-charge of a real estate office would be required to possess certain real estate experience and education surpassing that currently required in the *Broker-in-Charge Course*. Inasmuch as the broker-in-charge would no longer have supervisory responsibilities with regard to salespersons working at the office, Mr. Ball suggested that the term "broker-in-charge" could be changed to "administrative broker" or some similar term. The committee members expressed interest in pursuing this comprehensive re-structuring of the role of broker-in-charge and real estate licensure in general. Mr. Fisher and Mr. Outlaw reminded the committee that the Commission, in response to a similar recommendation from its prior *Broker-in-Charge Advisory Committee*, took steps leading toward the eventual elimination of the salesperson licensing category. However, anticipating objections from members of the North Carolina General Assembly, the Commission did not propose legislation which would impose additional requirements on salesperson licensees as a condition for their continued licensure. Mr. Fisher stated that the challenge to the committee would be to draft a proposal which would accomplish the objective of eliminating the salesperson license category while addressing the anticipated concerns of the General Assembly.

In preparation for its next meeting, the Commission staff will draft a proposal as a starting point for committee discussion regarding strengthening the qualification requirements for brokers-in-charge and eliminating the salesperson license category. The draft proposal will be sent to each committee member in advance of the meeting.

The meeting was adjourned to be reconvened October 21, 2004 at 9:00 a.m. in the Commission office.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 21st Day of October, 2004.

NORTH CAROLINA REAL ESTATE COMMISSION
2004 BROKER-IN-CHARGE ADVISORY COMMITTEE

October 21, 2004

Raleigh, North Carolina

REPORT

Committee Members Present:

Benjamin K. Ball (Morehead City)
W. Laynie Beck, Jr. (Fayetteville)
John W. Carroll (Asheville)
Paul G. Gilmer, Sr. (Greensboro)
Philip M. Guy, Sr. (Fayetteville)
Marsha H. Jordan (Lincolnton)
Robert W. Lawing (Charlotte)
Carol H. Lesley (Concord)
William H. Lucas (Rich Square)
Will Martin (Greensboro)
Harriet Worley (Raleigh)
Vance B. Young (Wrightsville Beach)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Larry A. Outlaw, Director of Education and
Licensing
Thomas R. Miller, Director of Legal Services
Mary Frances Whitley, Director of Administration
Emmet R. Wood, Director of Audits and
Investigations
Patricia A. Moylan, Legal Education Officer

Others Present:

Rich Zechini, NCAR Director of Regulatory Affairs

September 16 Meeting Report

Mr. Fisher welcomed and introduced to the committee Real Estate Commission Vice-Chair Marsha Jordan who was participating in the meeting in place of Mr. Lackey who could not attend.

The committee approved as presented Mr. Fisher's report of its September 16, 2004 meeting.

Possible Recommendation(s) to Commission

The committee reviewed a document prepared by the Commission staff [**Item 1**] to serve as a starting point for committee discussion regarding the possible strengthening of the qualification requirements for brokers-in-charge and elimination of the salesperson license category (*See September 16, 2004 meeting report, p. 6*), a copy of which was furnished to committee members in advance of the

meeting. Mr. Fisher emphasized that the Real Estate Commission has not seen the document and that it represents only one of many approaches the committee could take should it wish to recommend to the Commission changes in the broker-in-charge qualification requirements and/or restructuring the real estate licensing program.

The committee began its discussion with a review of legislative concerns which must be considered when proposing amendments to the Real Estate License Law which would increase education requirements or impose an experience requirement on licensees or license applicants. As stated in the document, from the Commission's previous efforts to increase qualification requirements for real estate licensees, it has become aware that some members of the North Carolina General Assembly are concerned over any changes which could restrict entry into the real estate business. With regard to increases in the amount of required prelicensing education, these legislators have also sometimes been supported in their opposition by some real estate firms which operate real estate schools. The committee acknowledged that these concerns should be considered when proposing increases in qualification requirements for brokers-in-charge or establishing a single (broker) license system which would necessitate statutory changes.

Broker-in-Charge Qualification Requirements.

Consistent with its previous discussions, the committee concurred with the finding in the document that the current 4 ½ hour *Broker-in-Charge Course* is inadequate to prepare brokers-in-charge to perform the tasks and duties required of them, and that experience in real estate brokerage transactions enhances education by affording practitioners an opportunity to apply classroom instruction in real-life situations.

Therefore, the committee recommended that the Real Estate Commission increase the qualification requirements to be broker-in-charge of a real estate office as follows:

1. Require persons requesting to be designated broker-in-charge of real estate offices to complete twelve classroom hours of instruction consisting of an eight-hour *Broker-in-Charge Course* and four-hour *Trust Account Course* both of which must be completed not later than 120 days following designation as broker-in-charge.

2. Require persons requesting to be designated broker-in-charge of a real estate office to possess at least one year full-time (or equivalent part-time) experience as a real estate broker and/or salesperson, or real estate education/experience equivalent to such experience. Verification of such experience shall be by certified statement from the person requesting designation that he/she has been actively engaged in the real estate brokerage business (which may include residential, commercial, property management or other transactions for which a real estate license is required) for the required period of time, with the Commission conducting spot inspections of licensees and records to better assure compliance. For the purposes of this requirement, "full-time" shall mean a minimum of forty hours per week.
3. Require persons designated as broker-in-charge of a real estate office to complete each year while designated a continuing education course that is either developed by the Commission for this purpose or chosen from a list of courses approved by the Commission which the Commission has determined to be of special benefit to brokers-in-charge, the completion of which will satisfy the person's annual continuing education elective course requirement. [If this recommendation is implemented, the broker-in-charge instruction described in recommendation #1 would not have to be repeated on a recurring basis by brokers-in-charge who are continuously designated.]

Single Licensure: Continuing its discussion from its previous meeting regarding the feasibility and advisability of eliminating the salesperson license category in favor of a single (broker) license, the committee concurred with the assessment in the document that (1) there are relatively few differences between the qualification requirements for broker and salesperson licenses, (2) brokers-in-charge generally exercise the same degree of supervision over newly licensed salespersons and brokers; and (3) real estate consumers neither know nor care whether their agent is licensed as a broker or salesperson, expecting the same level of service from each. Mr. Outlaw furnished and reviewed with the committee summaries [Item 2] of single license programs implemented by the Colorado Division of Real Estate in 1997 and the Oregon Real Estate Agency in 2002. The committee determined that, especially when compared with the higher real estate education requirements for broker licenses in other states and the fact that, unlike nearly all other states, North Carolina does not require applicants for broker licenses to possess real estate experience, additional real estate education is needed to improve the competency level of practitioners making them better able to serve the needs of real estate consumers.

After discussion, the committee recommended that the Real Estate Commission eliminate the salesperson license category and increase the education requirements for real estate broker licenses as follows:

1. On a date certain, discontinue issuing salesperson licenses.
2. Require persons applying for broker licenses after that date to complete a 90-hour broker prelicensing course and pass the state licensing examination in order to qualify for licensure, and require them to complete within two years of licensure an additional 90-hour post-licensing course of instruction in order to retain their licenses. Until they have completed the entire 180-hour course of instruction, they must be supervised by a broker-in-charge if/when they engage in real estate brokerage, and they could not be designated broker-in-charge of a real estate office.
3. Convert on that date all salesperson licenses to broker licenses (active salesperson to active broker, inactive salesperson to inactive broker), but require "converted brokers" to complete within two years a 24-hour "broker transition course" of instruction or certify to the Commission that they have at least four years full-time cumulative experience as a real estate salesperson or broker within the past six years. Completion of this course would be recognized as satisfying a portion of the licensee's continuing education requirement. Failure to complete the course (or satisfy the experience alternative) within the two-year period would place the license on inactive status, and the inactive licensee would be required to complete the 90-hour post-licensing course in order to activate the license. *[Mr. Gilmer and Mr. Young dissented as to the experience alternative to the broker transition course, believing that salespersons should be required to complete additional education as a condition for obtaining their broker licenses].* Until "converted brokers" have completed the 24-hour broker transition course of instruction (or satisfied the experience alternative) they must be supervised by a broker-in-charge if/when they engage in real estate brokerage, and they could not be designated broker-in-charge of a real estate office.

With regard to implementing its recommendations to strengthen broker-in-charge qualification requirements and eliminate salesperson licenses in favor of a single (broker) license category, the committee considered the amount of time which may be needed to inform and garner support for the proposals from real estate practitioners and the

time required for the Commission to adopt rules and put in place necessary policies and procedures. Mr. Outlaw also made the committee aware of Colorado's experience in transitioning to a single license system where persons contemplating applying for licensure rushed to obtain their salesperson licenses prior to the effective date of the Act so they could then qualify for their broker licenses by completing less education than would have otherwise been required. As a result, there was a greatly increased demand for the salesperson prelicensing course and corresponding lack of demand for the broker prelicensing course. In addition, Colorado experienced a prolonged period of low enrollment in prelicense courses and decreased numbers of broker license applicants after the implementation date.

Based upon these considerations, the committee recommended that the effective date of the change in broker-in-charge qualification requirements be October 1, 2005 to coincide with the deadline for completing the current *Broker-in-Charge Course* by persons designated as broker-in-charge prior to October 1, 2000. Regarding implementation of its proposal to eliminate salesperson licenses, the committee recommended that the effective date be as soon as practicable and that efforts be taken to prevent persons from circumventing the proposed 180-hour broker education requirement by taking the current 67-hour salesperson prelicensing course and proposed 24-hour broker transition course.

There being no further business to come before the 2004 *Broker-in-Charge Advisory Committee*, Mr. Fisher stated that he would prepare the report for the committee's October 21 meeting and final committee report for submission to the Real Estate Commission. Mr. Fisher stated that he plans to submit the report to the Commission not later than the Commission's December 8 meeting and will circulate a draft to committee members for their review and comments in advance of the meeting. Mr. Fisher will notify the committee members of the time and date when their report and recommendations will be discussed by the Real Estate Commission to afford interested members an opportunity to be present.

Expressing to the committee members the appreciation of the Real Estate Commission for their valuable service, the meeting was adjourned.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 5th day of November, 2004.